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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,364	07/25/2003	Paul R. Jannot	30618	2463
4717	7590	11/30/2006	EXAMINER	
DAVID A. GREENLEE P.O. BOX 340557 COLUMBUS, OH 43234			TYSON, MELANIE RUANO	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 11/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/627,364

Applicant(s)

JANNOT, PAUL R.

Examiner

Melanie Tyson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This action is in response to applicant's amendment received on 16 October 2006.

Specification

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because it contains legal phraseology (comprises; line 2). Correction is required. See MPEP § 608.01(b).

2. Corrections that have been made to the specification are accepted.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claims 1, 4, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koseki (Publication No. US 2003/0055439 A1) in view of Lahay (Patent No. 3,696,920).

It is noted that the applicant is invoking 112 6th paragraph. Regarding claim 1, Koseki discloses an apparatus for holding and arranging threads during surgical operations (Figure 2, element 2). Figure 2 shows the apparatus (2) comprises an elongated body formed of resilient material (vinyl chloride or polyethylene foam; paragraph 13), having a plurality of slits (3) through the top of the apparatus (2) surface that are sized to receive and grip a surgical suture (or thread; paragraph 13). Koseki also discloses an attachment means (a hole 5 to insert cloth forceps) for attaching the apparatus to a supportive surface (covering sheet; paragraph 13). Regarding claim 4, Figure 2 shows the body has an elongated cruciform shape and a semi-cylindrical cross-section.

Regarding claim 1, Koseki does not disclose a pocket means adjacent each slit for receiving and retaining a hemostat attached to a suture. Lahay discloses a device for organizing objects, more particularly, it relates to a device for use in a surgical operating theatre to organize various surgical instruments (column 1, lines 5-7). Unlike Koseki, Lahay discloses a pocket means (channel 11) adjacent each slit (13) for receiving and retaining surgical instruments (column 1, lines 29-32), for example, a hemostat attached

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to a suture. The pocket means adjacent each slit allows objects to be maintained in an organized configuration (column 1, lines 26-27). Therefore, to provide a pocket means on the apparatus of Koseki as taught by Lahay would have been obvious to one of ordinary skill in the art at the time the invention was made in order to keep instruments organized during surgery.

Regarding claim 7, Koseki does not disclose the body is made of a sterilizable material. Unlike Koseki, Lahay discloses the apparatus can be sterilized by a variety of known sterilizing procedures (column 4, line 53-54), thus making the composition of the body a sterilizable material. Therefore, to construct the body of the apparatus of Koseki with a sterilizable material as taught by Lahay would have been obvious to one of ordinary skill in the art at the time the invention was made in order to avoid cross-contamination.

6. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Koseki in view of Lahay as applied to the claims above, and further in view of Gossett (Patent No. 2,591,805).

Koseki in view of Lahay discloses a device as described above, however, Koseki in view of Lahay does not disclose a tapered pocket. Gossett discloses a device for holding implements. Figure 1 shows a pocket (between edges 26) that is formed when an implement is inserted there through. The pocket engages the screwdriver shank using edges (26) as a line of contact (column 2, lines 1-4). This configuration provides a secure hold for implements of widely varying thickness (column 1, line 5-7). It is obvious that the pocket would be tapered as a hemostat is inserted between edges (26) since a

hemostat has a varying thickness, or a tapered shape. Therefore, to construct the pocket of Koseki in view of Lahay as taught by Gossett would have been obvious to one of ordinary skill in the art at the time the invention was made in order to provide a device that securely holds a hemostat during surgical procedures.

7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Koseki in view of Lahay, in further view of Gossett as applied to the claims above, and in further view of Creelman (Patent No. 2,692,599).

Koseki in view of Lahay in further view of Gossett discloses a device as described above, however, Koseki in view of Lahay in further view of Gossett does not disclose indicia means located on the body adjacent each slit. Creelman discloses a device for holding surgical ligatures. Unlike Koseki in view of Lahay in further view of Gossett, Creelman discloses indicia means (Figure 1, element 28) such as letters of the alphabet or numerals (column 3, lines 15-18) located on the body (10) so that when the reconstruction phases of the operation are reached, the surgeon may know definitely without any confusion the ligaments or other body members to which they are fastened (column 4, lines 20-25). Therefore, to construct the device of Koseki in view of Lahay in further view of Gossett with indicia as taught by Creelman would have been obvious to one of ordinary skill in the art at the time the invention was made in order to identify the different ligatures during the reconstruction phases of the operation.

8. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koseki in view of Lahay as applied to the claims above, and further in view of Gabbay et al. (Patent No. 4,185,636).

Koseki in view of Lahay discloses a device as described above, however, Koseki in view of Lahay does not disclose a plurality of spaced pods. Like Koseki in view of Lahay, Gabbay et al. disclose a suture organizer (bottom portion of Figure 4). Unlike Koseki in view of Lahay, Gabbay et al. disclose a plurality of spaced pods (7) mounted on an elongated base. It would have been obvious to provide adjacent pockets as taught by Lahay on each pod for the same reasons provided in paragraph 8. Figure 7 shows the pods (7) are beveled on the surface, since they contain sloped edges, and the thicknesses of the slits (portions between 7a and 7b) are narrower than the thickness of a suture (3), since they grip and maintain the sutures (3) in place. This configuration facilitates speedy and orderly surgical procedures (column 1, lines 14-17). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a plurality of pods as taught by Gabbay et al. on the flexible elongated body of Koseki in view of Lahay in order to provide a device that facilitates speedy and orderly surgical procedures.

Response to Arguments

9. Applicant's arguments filed 16 October 2006 have been fully considered but they are not persuasive. Applicant argues primarily that Koseki and Lahay do not disclose a device having a plurality of slits or slots for holding hemostats and that there is no provision for preventing the hemostats from being pulled through the retaining slots. However, Figure 2 of Koseki shows a plurality of slits (3) through the top of the apparatus (2) surface that are sized to receive and grip a surgical suture (or thread; paragraph 13). Figure 5 of Lahay shows a plurality of slits (13) through the top of the

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apparatus (10) and a "pocket" means (11) adjacent each slit, since they are small cavities or openings that receive and retain surgical instruments (column 3, lines 35-38). Furthermore, the pocket means adjacent each slit are capable of receiving and retaining a hemostat attached to a suture against being pulled through the body since the device is used for organizing a variety of medical instruments (column 1, lines 37-38; hemostats attached to sutures are commonly used in surgical procedures) and prevents movement by locking instruments into the pocket (column 2, lines 4-7).

Gossett, Creelman, and Gabbay are all considered to be analogous art since they all relate to holders and/or organizers for implements. See MPEP § 608.01(b) regarding proper language and format for an abstract of the disclosure.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie Tyson whose telephone number is (571) 272-9062. The examiner can normally be reached on Monday through Thursday 9:00 a.m. - 6:30 p.m., alternate Fridays 9:00 a.m. - 5:30 p.m. EST

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie Tyson *MT*
November 27, 2006


ANH TUAN T. NGUYEN
SUPERVISORY PATENT EXAMINER

11/27/06